

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION  
(Pre-publication of Notice Statement)

Amend Sections 122, 125, 149.1, 150, 150.02, 150.03, 150.05, 163, 163.5, 164, 174,  
and 180.3;

Add Section 124.1

Title 14, California Code of Regulations (CCR)

Re: Commercial Fishing Permit Renewal Provisions

I. Date of Initial Statement of Reasons: January 14, 2008

II. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: February 7, 2008  
Location: San Diego, CA

(b) Adoption Hearing: Date: April 11, 2008  
Location: Bodega Bay, CA

III. Description of Regulatory Action:

(a) Statement of Specific Purpose of Regulation Change and Factual Basis for Determining that Regulation Change is Reasonably Necessary:

***1. Amend existing T14 regulations to conform to new language in Section 7852.2 of the Fish and Game Code, regarding commercial fishing permit renewal late fees, late fee deadlines, and appeal provisions, as established by AB 1144 (Ch. 279, Stats. 2007).***

New language in Section 7852.2 of the Fish and Game Code, effective April 1, 2008, provides as follows:

*Notwithstanding any other provision of law, a commercial fishing license, stamp, permit, or other entitlement for which there is a renewal deadline shall not be renewed after that deadline, except as follows:*

*(a) In addition to the base fee for the license, stamp, permit, or other entitlement, the department shall assess a late fee for any renewal the application for which is received after the deadline, according to the following schedule:*

*(1) One to 30 days after the deadline, a fee of one hundred twenty-five dollars (\$125).*

*(2) Thirty-one to 60 days after the deadline, a fee of two hundred fifty dollars (\$250).*

*(3) Sixty-one days or more after the deadline, a fee of five hundred dollars (\$500).*

*(b) The department shall not waive the applicable late fee. The late fees specified in this section are applicable beginning in the 2008 license year, and shall be adjusted annually thereafter pursuant to Section 713.*

*(c) The department shall deny any application for renewal received after March 31 of the permit year following the year in which the applicant last held a valid permit for*

that fishery.

*(d) An applicant who is denied renewal of a late application may submit a written appeal for renewal to the commission within 60 days of the date of the department's denial. The commission, upon consideration of the appeal, may grant renewal. If the commission grants renewal, it shall assess the applicable late fee pursuant to subdivision (a).*

Existing Title 14 regulations in Sections 122, 125, 149.1, 150, 150.02, 150.03, 150.05, 163, 163.5, 164, and 180.3 establish commercial permit requirements and permit renewal provisions for spiny lobster, rock crab, squid, nearshore, herring and spot prawn fisheries. The late fees, payment deadlines, and grace periods for permits in each of these Sections differs slightly from one another, as the regulations for each fishery-specific permit were adopted by the Commission over many years in numerous regulatory actions. The language in these sections conflicts with the new statutory provisions which now prevail on matters surrounding renewal for all commercial fishing permits. Amendment of the antiquated regulations is needed for clarity and consistency, and to allow the sliding late fee schedule established by statute to be implemented as the Legislature intended.

Additionally, the statute defines late permit renewal appeal provisions which now also apply to each of these commercial fishery permit programs. Amendments to the regulatory language in several of these Sections are needed for consistency and clarity on this subject as well.

Subdivision 1050(c) of the Fish and Game Code gives authority to the Commission to prescribe the terms and conditions under which commercial fishing permits shall be issued by the Department. The proposed amendments to each of these Sections would be promulgated under this authority, and would result in striking the old provisions and replacing them with the statement that that late fees, late fee deadlines, and late renewal appeal provisions are specified in Fish and Game Code Section 7852.2. The changes will also aid the Department's License and Revenue Branch staff and the permittees themselves, as streamlining the terms for all commercial permit renewals will allow for a simpler, more efficient and consistent renewal process for all fisheries.

***2. Establish a renewal deadline of April 30 each year for Gill Net/Trammel Net Permits and Halibut Trawl Vessel Permits effective in 2009; consistent with the date for other moratorium and restricted access permit programs.***

Section 174, Title 14, CCR, establishes a permit requirement for users of gill and trammel nets, and qualifications for this permit. However, there is no renewal deadline for the permit established in regulation or the Code, unlike virtually all of the other commercial fishing permit programs which require renewal by a set date each year. While Section 8681.5 of the Fish and Game Code allows for annual renewal of existing permits, since there is no

established deadline, permittees may renew at any time during the permit year (April 1 through March 31). Beyond March 31, there is no regulation providing for grace period or late payment provisions, and since the provisions of Section 7852.2 are predicated upon the existence of a renewal deadline, the new statutory provisions would not apply.

Establishment of an annual renewal deadline is necessary to provide better notice to permittees of the annual renewal requirement, and in order for the renewal provisions of newly-amended Section 7852.2 to apply regarding late fees, late fee deadlines, and late renewal appeal provisions. The Department proposes a renewal date of April 30 each year, beginning in 2009, consistent with other commercial fishery permit programs. Requiring the same renewal deadlines across permit programs assists the Department in more efficient program administration by reducing the number of mailings and notices sent to commercial fishermen, as many individuals and vessels are issued permits for multiple fisheries each year.

Similarly, there is no annual renewal deadline for the statutorily-established California Halibut Trawl Vessel Permit, which has been required for halibut trawlers since April of 2006 pursuant to Fish and Game Code Section 8494. The Department proposes that the Commission add Section 124.1 to Title 14 to make specific the terms of Section 8494, by requiring the permit be renewed annually by April 30<sup>th</sup> of each year; and specify that the late fees, late fee deadlines, and late renewal appeal provisions for this permit are provided in Section 7852.2 of the Fish and Game Code.

### ***3. Amend Section 174 of T14 relating to Gill Net/Trammel Net Permits, for consistency with other existing statutes***

Regulations of subsection 174(a), Title 14, CCR provide that it is unlawful to fish with a gill net or trammel net unless a permittee is aboard the vessel. Fish and Game Code Section 7857(c), amended after the regulation in subsection (a) was adopted, is specific on this point. The Department therefore proposes the Commission amend the provision in the regulation to make clear that the terms of Section 7857(c) govern, which will provide clarity and consistency. Additionally, because gill/trammel net permits may be issued at any Department office that issues commercial licenses, the Department proposes the Commission strike language in subsection 174(a) indicating permits shall be issued at department offices in Eureka, Menlo Park, Monterey, Long Beach and San Diego.

Amendments to subsections (c) and (d) are proposed to make clear that permits must be renewed annually by April 30, with late provisions specified in Section 7852.2 of the Fish and Game Code (see discussion in items 1 and 2 above). Additionally, language indicating that gill/trammel net permits are not transferable would be repealed, as permits in fact are transferable subject to

conditions specified in Section 8681 of the Fish and Game Code. Other language which duplicates Code provisions relative to whom permits may be issued and the duration of the permit would also be removed as these provisions are duplicative.

Revocation provisions specified in subsection (h) are proposed to be updated to reflect that Fish and Game Code Section 8681 specifies that the commission may suspend, revoke, or cancel a permit, license, and commercial fishing privileges pursuant to Fish and Game Code Section 7857.

Typographical errors and technical corrections are proposed to subsections (b)(6) and (i).

***4. Amend Section 180.3 of T14 relating to Spot Prawn Trap Fishery Permits, for consistency with other existing statutes, regulations and current Department licensing procedures.***

Amendments to existing text of subsections (g), (i), (m), and (n) are proposed to make clear that permits must be renewed annually by April 30, with late provisions specified in Section 7852.2 of the Fish and Game Code (see discussion in items 1 and 2 above). Subsection (i), regarding appeal procedures for reinstatement of expired permits, would be repealed as the language is not consistent with appeal provisions of Section 7852.2. As a result, re-lettering of subsections (j) through (n) is proposed.

Amendments to subsection (h) are proposed to remove the street address of the Department's Monterey office. If a Department office moves to a new location, the regulation becomes inaccurate.

Amendments to re-lettered subsection (i), formerly subsection (j), are proposed to repeal listing the possession of a commercial fishing license, which is already required by Section 7857 of the Fish and Game Code. It is not necessary to restate the requirement.

Amendments to re-lettered subsection (j), formerly subsection (k), are proposed for clarity. A notarized statement from a spot prawn permittee who wishes to transfer the permit or change ownership of vessel with a valid permit is sufficient for the Department to review the permittee's request. It is not necessary to have a separate application for this purpose.

Additionally, amendments are proposed to change the time period to allow permit holders to transfer a permit from once each 12 months to once each permit year. Commercial fishing permits are valid for a permit year, April 1 through the following March 31. For administrative consistency for permittees, the time frame to transfer a permit should be the same as the valid period of the permit.

Amendments to re-lettered subsection (k), formerly subsection (l), are proposed that would require that persons applying for a change of ownership submit their request in the form of a notarized statement. Under existing regulations of other Sections of Title 14, persons applying for a transfer submit their request in the form of a notarized statement to the Department. The change is proposed for consistency. Re-lettered subsection (m) lists the change of ownership fee. Subsection (k)(4) would be added to specify the requirement that the fee be paid to the department, similar to the provisions listed for the transfer of a permit.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Section 1050, Fish and Game Code.

Reference: Sections 1050 and 7852.2, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None.

- (d) Identification of Reports or Documents Supporting Regulation Change:

None.

- (e) Public Discussions of Proposed Regulations Prior to Notice publication:

No public meetings were held prior to the notice publication. The 45-day comment period provides adequate time for review of the proposed amendments.

#### IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change:

None.

- (b) No Change Alternative:

Failing to amend the regulations as proposed would result in a conflict between the statute, which speaks generally, and more specific regulations previously promulgated by the Commission which speak to each specific type of fishery permit. The regulations must be amended to ensure that it is clear that the statute is the final word on issues surrounding commercial permit renewal late fees, late fee deadlines and appeal provisions.

(c) Consideration of Alternatives:

In view of the information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The proposed changes are necessary to conform to recent statutory changes specifying permit renewal late fees, late fee deadlines, and renewal appeal provisions.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal

Funding to the State:

None.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

(f) Programs Mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4:

None.

(h) Effect on Housing Costs:

None.

## Informative Digest/Policy Statement Overview

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